

Justice is a way of being, not a moment in court

Charlotte Weinberg discusses the myth of justice in an unequal society.

England and Wales currently has 139 per 100,000 of its population in prison (85,393 people); more than any other European country (and more than Libya, Malaysia and Burma) (Ministry of Justice, 2010). The UK locks up more of its young people than any of its counterpart nation states (roughly 2.5 per cent of all prisoners in England and Wales are under 18), one of the highest proportions in the rich world (*The Economist*, 2009), despite the fact that according to the Home Office (2010), crime is actually on the decrease. So apparently we have less crime, and yet we have more people in prison than ever. Does that sound reasonable? Not to me.

I am not sure that prison is a useful tool in social cohesion or development and I think prison is an issue of huge concern for any society with social equality or reasonable sanctions and civil liberties as an aspiration. This article accepts that prison exists, but will interrogate how it is used, by whom, for what purpose and with what effect.

Official statistics show that between 1993 and 2001, the population of women prisoners increased by 145 per cent (Goodchild, 2001). Civil liberties campaigners have argued for a long time that defendants are not given fair hearings because magistrates are predominantly white, middle-class men (ibid). Over half the prison population of both genders have been found guilty of acquisitive crimes such as burglary or handling stolen goods; so economic factors – however you analyse these – are a crucial element of the picture. The fact is the vast majority of the prison population are working-class men, with disproportionate representation

from minority ethnic groups. Nationally, black people are at least six times more likely to be stopped than white people under stop and search law (Equality and Human Rights Commission, 2010).

Violent offenders are thought to make up only a very small percentage of the current prison population. Imprisoning people therefore has very little to do with guaranteeing the safety of society (Buckland, 2006). Theft is the most common indictable offence for both male and female offenders and when a young man is charged with burglary or theft, he is likely to be bailed if it is his first offence; his female counterpart is likely to be remanded. 'It's inevitable that magistrates come with their own prejudices. The tradition has been of middle-class magistrates keeping the working classes under control and it's very hard to get rid of this tradition. This [the legal system] is one area when you could still bring a charge of sexism because of the social expectations of women' (Goodchild, 2001).

Who judges justice?

Even leaving aside the issue of which crimes get discovered and concentrating on those that are, when people do come into contact with the system it seems there are some anomalies at work. Our criminal justice system operates through a variety of agents: police, courts, probation, prison, and involves many structures of judgement before getting to a judge.

At every step of the way throughout our criminal justice system, judgements are being made: Is an accusation judged worthy of police attention? Is a case judged to be substantial enough to warrant a



Scales of injustice

Photo courtesy of Melinda Kerrison

court's attention? Is the plaintiff judged worthy of protection/belief?

(Cross)-culturally we have a set of criteria by which we determine 'good' and 'bad'. This is sometimes referred to as the moral compass. It is the set of values and attitudes by which we determine how we expect each other to act. Criminal law sets out in practice how we expect each other to respect property, the body and transactional activity – sex and the use of classified drugs are criminalised under certain circumstances. Violence against the person, assault, attack, aggravated burglary, racially motivated or hate crime, theft, handling stolen goods, rape, abduction, kidnap, murder, criminal damage, and anti-terrorism laws are all extensions of the implicit 'moral code' by which we expect each other to abide. Deviate from this punishment will supposedly ensue.

Innocence, guilt and the myth of fair hearing

Punishment however, may look slightly different depending on who you are, where you are and who finds out about what you have done. Who gets caught is not necessarily the same thing as who commits crime. Who goes to prison is not necessarily the same thing as who is guilty or worthy of 'punishment'.

There are people in prison who have committed some very violent and unacceptable crimes. I am not suggesting there need be no way of recognising and responding to these crimes, nor that people should be absolved of their responsibility. Sometimes however, I do believe that those most in need of holistic approaches are sent for punishment while those most abusive of privilege are free to perpetuate their crimes.

We can all think of cases where priests, 'nice neighbours', city bankers and high profile MPs or public figures have been discovered to have been committing offences belatedly because our cultural norms judge certain people to be less likely to commit crime than others. These norms mean it is harder for us to imagine a teacher/lawyer/MP/doctor/prison officer/police officer to be capable of contradicting the very moral code s/he is in post to protect.

Race, class and gender play important roles in our perceptions, applications and expectations of justice, not only in the UK but around the world. In 2002 in the UK there were more African Caribbean entrants to prison (over 11,500) than there were to universities (around 8,000). Forty-eight per cent of prisoners are at, or below, the level expected of an 11-year-old in reading, 65 per cent in numeracy and 82 per cent in writing (Prison Reform Trust, 2010). The simple dichotomy of 'right' and 'wrong' does little to illuminate the nuanced and sophisticated range of impacts that social learning and discrimination can have on criminal activity. Racism, sexism, homophobia and class structures mean that very often even people guilty of criminal activity are on trial less for their crime than for their backstory.

A vision of just justice

A justice system that aims to address justice must surely operate within a context of social equality. That might mean that the law and the sanctions for offending must become clearer; so that any abuse of power is noticed in the context of impinging on our

justice; so that the teacher that shouts or ridicules a student, the doctor that inappropriately touches a patient, the priest that contradicts his own sermon, the lawyer that buys cocaine

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from his client, the footballer who abuses a woman or has a fight at a club, the MP who falsely accounts for public funds (and the list goes on) must be seen in the same light as the drug dealer, gang member, prostitute and everyone else brought before the courts.

But what then if we also acknowledge that no two people are the same, no set of circumstances is the same and no single response to any situation can be the same – 'You can never stand in the same river twice' (Heraclitus). This then requires that we adjust the very basis upon which our understanding of justice and a justice system is based. 'Dealing equally with those who are unequal simply creates more inequality' (Kennedy, 1992). There must be only one system and it must be founded in a principle of law that applies equally, even if the law itself cannot ever be applied equally.

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Everyone must know that justice is a system established less to maintain social order than to engender social cohesion; not so much to create punishment and sentencing guidelines as to offer incentives to live lives with each other's best interests at heart. A system of justice based on people's potential, social development and our collective abilities to think of ways to enhance our lives and unite our communities.

This is a system of justice based on principles, values and ethics not currently embodied in law. It is a system in which we all expect to be

treated with fair and clear boundaries, with reasonable responses and with purposeful sanctions that contribute to our common aims.

This is a system of justice that operates even outside the courts, outside the police station or probation office. It is a way of life, complemented by our cultural norms, our expectations of each other, our language, our fiscal and foreign policies, our departments for housing, health and the Home Office.

Creating a legal framework which is truly equitable means a real overhaul of our legal thinking. The institution itself has to change. Only then will the law be just. (Kennedy, 1992) ■

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